Supreme Court, U.S.
FILED

No.

001879 JUN 05 2001

IN THE

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

HOWARD ROSS,

Petitioner (Plaintiff-Appellant)

v.

Honorable HUGH MADDOX or his successor, Individually and in his official capacity as Justice of the Supreme Court of Alabama, Honorable PERRY HOOPER or his successor, Individually And officially in his official capacity as Chief Justice of the Supreme Court of Alabama, Honorable RALPH COOK or his successor, Individually and officially in his official capacity as Justice of the Supreme Court of Alabama, Honorable CHAMP LYONS, JR. or his successor, Individually and officially in his official capacity as justice of the Supreme Court of Alabama, and Honorable Douglas Johnstone or his successor, Individually and officially in his official capacity as Justice of the Supreme Court of Alabama,

Respondents

On Petition For Writ Of Certiorari
To The United States Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Howard Ross
6620 #D Willow Pointe Dr.
Huntsville Alabama 35806
(256) 721-3810

QUESTION PRESENTED

Is the Rooker-Feldman "inextricably intertwined"doctrine an absolute jurisdictional bar to a federal district court petition to order a state appellate court to provide a meaningful review of an appeal in that state in compliance with the United States Constitution 14th amendment. The right to appeal is provided by state constitution and statute. The district court has not been presented with the state judgement and has not been asked in any way to review it.

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OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.
The opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was December 21, 2000. A timely petition for rehearing was denied by the United States Court of Appeals on March 7, 2001, and a copy of the order denying rehearing appears at Appendix C. The jurisdiction of this Court is invoked under 28 U.S.C. $1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution 14th amendment, Section b1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28 U.S.C. $1257 : a) Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially setup or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.
b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Federal Rules of Civil Procedure - rule 12(h)(3) : Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Code of Alabama (1975) title 12 chapter 22 section 2: From any final judgement of the circuit court or probate court, an appeal lies to the appropriate appellate court as a matter of right by either party, or their personal representatives, within the time and in the manner prescribed by the Alabama Rules of Appellate Procedure.

Alabama Constitution (1901) article 1 section 10: That no person shall be barred from prosecuting or defending before any tribunal in this state by himself or counsel, any civil cause to which he is a party.

STATEMENT OF THE CASE

The Plaintiff filed a petition in the Circuit Court of Madison County Alabama for a sale for division of property owned jointly by himself, from an execution sale, and others holding under a sale from a bankruptcy which did not name the plaintiff. After a motion for summary judgement by the others claiming they had redeemed the plaintiff's interest from the execution sale because they had previously offered to redeem without ever reimbursing the plaintiff or filing a bill to redeem, a pretrial hearing was held. Their motion was granted with an order divesting any claim of title from the plaintiff. The case was appealed to the Alabama Court of Civil Appeals without a transcript inasmuch as there was no trial. The judgement was affirmed in a no opinion split decision in which the majority issued no opinion but referenced 2 cases where appellate courts refused to review the merits of cases before them that had trials and evidentiary proceedings because the appellants had failed to provide a transcript. The first, Boykin v. Drake, 699 So.2d 233, is a garnishment action, and the second, Legal Systems, Inc. v. Hoover, 619 So.2d 930 is an action on a printing contract - neither responsive to issues of real property or redemption. The minority issued a dissenting opinion in favor of the plaintiff. The plaintiff filed a petition for writ of certiorari

with the Supreme Court of Alabama to bring up the record and review the lower court decisions for state reasons. The plaintiff subsequently mailed to that court an additional argument based on federal due process violations that occurred prior to the filing of the petition. The petition was denied by the defendants in this case as justices of that supreme court and the record of the case was never brought up to that court. Subsequently the plaintiff filed the instant action in the Federal District Court for Northern Alabama for denial of U.S. constitution fifth and fourteenth amendment violations, asking the court to order the Alabama Supreme Court grant the petition for certiorari to bring up the record and provide a meaningful appeal by the state court. The action was dismissed sua sponte as being frivolous or malicious, or both, and failing to state a claim upon which relief may be granted. Subsequently the plaintiff filed an appeal with the Eleventh Circuit Court of Appeals. In that court's opinion of December 21, 2000 the district court judge was found to be in error, but the judgement was affirmed on other unargued grounds which the court interjected on its own initiative - lack of jurisdiction according to the Rooker-Feldman doctrine. A rehearing was requested and denied.

REASON FOR GRANTING THE PETITION

This decision of the eleventh circuit is in conflict with recent decisions of other circuits and the authority of Supreme Court justices in consenting opinions regarding the Rooker-Feldman doctrine of U.S.district court jurisdiction.

In their present opinion the eleventh circuit declares that "Under the Rooker-Feldman doctrine, a district court lacks jurisdiction to review a state court decision, even when a plaintiff alleges that the action of the state court was unconstitutional. See Feldman, 460 U.S. at 486, 103 S.Ct. at 1317; Rooker, 263 U.S. at 416, 44 S.Ct. at 150." 11th Cir.Opinion at 5, Appendix A. Claiming a lack of jurisdiction, they cannot "determine if the state courts afforded him due process. Because this could not be done without review of the state court decisions, his claim is

inextricably intertwined with the prior state court judgements." 11th Cir.Opinion at 6.

The plaintiff-appellant, however, has never provided any federal court with a copy of his adverse state court judgement as evidence or otherwise, and in his brief has asked the federal appellate not review that judgement by "asserting that, "the federal court is not asked to review the decision of the state circuit court nor its application of state law." Appellant Brief at 2". 11th Cir. Opinion at 5, Appendix A. The plaintiff's cause is independent of the state cause inasmuch as he made no claim that any state court decision was erroneous or that it in itself violated his rights. The Rooker-Feldman doctrine of inextricably intertwined claims does not apply if adjudication by a federal court "would not require the federal court to determine that the state court was wrong. See Centifanti, 865 F.2d at 1430." Parkview Associates v. City of Lebanon, 225 F.3d 321, 326 (3rd Cir.2000). "Federal court has no jurisdiction over federal constitutional issues if consideration would require a review of the allegations underlying the state judicial decision." Worldwide Church v. McNair, 805 F.2d 888,891 (9th Cir. 1986). A plaintiff can not ask a federal district court to provide appellate review of state court decisions.

> "But if he claims, as he does, that people involved in the decision violated some independent right of his, such as the right (if it is a right) to be judged by a tribunal that is uncontaminated by politics, then he can, without being blocked by the Rooker-Feldman doctrine, sue to vindicate that right ... Otherwise there would be no federal remedy for a violation of federal rights whenever the violation so far succeeded in corrupting the state judicial process as to obtain a favorable judgement, as alleged in cases such as Denis v. Sparks, 449 US 24, 101 S.Ct.183, 66 L.Ed. 2d 185 (1980)"

Nesses v. Shepard, 68 F.3d 1003, 1005 (7th Cir.1995).

> "The Rooker-Feldman doctrine asks is the federal plaintiff seeking to set aside a state judgement, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party? If the former, then the district court lacks jurisdiction; if the latter then there is

jurisdiction and state law determines whether the defendant prevails under principles of preclusion." Gash Associates v. Village of Rosemont, Ill, 995 F.3d 726, 728 (7th Cir 1993). In the present case no opinions have been issued by the state courts (adverse to the plaintiff). "If no consideration has been given or any decision on the matter is ambiguous, it is unlikely that the issues presented to the state high court and to the federal court are so "inextricably intertwined" that the federal court cannot take jurisdiction." Robinson v. Ariyoshi, 753 F.2d 1468, 1472 (9th Cir. 1985). The plaintiff in this case is only asking the federal court to order the state court to provide appellate review as required by state constitution and laws. That review could still affirm the decision of the lower state court. In Penzoil v. Texaco in a concurring opinion Justice Marshall wrote "The federal claim is inextricably intertwined with the state court judgement if the federal claim succeeds only to the extent that the state court wrongly decided the issue before it," Penzoil co. v. Texaco, inc., 481 U.S.1,25; 107 S.Ct.1519,1533; 95 L.Ed.2d 1 (S.Ct.1987-Justice Marshall concurring). In a concurring opinion Justice Brennan wrote

> "While Texaco cannot, consistent with due process and equal protection be arbitrarily denied the right to a meaningful opportunity to be heard on appeal ... In this case, however, Texaco filed the $1983 action only to protect its federal constitutional right to a meaningful opportunity for appellate review, not to challenge the merits of the Texas suit. Texaco's federal action seeking a stay of judgement pending appeal is therefore an action "separable from and collateral to" the merits of the state court judgement ... Since Texas has created an appeal as of right from the trial court's judgement, it cannot infringe on this right to appeal in a manner inconsistent with due process or equal protection." Penzoil co. v. Texaco, inc., 481 U.S.1,18; 107 S.Ct.1519,1530; 95 L.Ed.2d 1 (S.Ct.1987-Justice Brennan concurring).

Furthermore, the plaintiff physically could not have raised this federal question in the state courts because the cause did not accrue until the petition for writ of certiorari was denied by the defendants. "A cause of action is generally held to be a union of the right of the plaintiff and its infringement by the defendant." Words and Phrases, Cause of Action-Accrual Vol 6 Page 589 (1966).

While due process claims other than the instant one were mailed to the defendants subsequent to the filing of the petition inorder to encourage them to issue the writ, there is no reason to believe that even they were considered inasmuch as the record was not brought up for review. The plaintiff has provided the state appeals court no opinion affirmation to the federal court strictly as evidence of due process denial so as not to have an abstract claim, but not for review. The split decision of that court is used as evidence that the plaintiff is not pursuing a frivolous or malicious action - inasmuch as there is a learned appellate level judge whose opinion concurs with the pro se plaintiff. See Appendix D.

This case is of national importance because it defines the role that federal district courts can play in protecting the rights of the citizens of a state to a fair and even application of appellate review. Federal courts have provided Alabamians protection of due process from the actions of appellate justices. See Aetna Insurance v. Lavoie, 475 U.S. 813; 106 S.Ct. 1580; 89 L.Ed2d 823 (S.Ct.1986). Since this is not a class action, the federal district court is not being asked to constantly monitor the Alabama judiciary - only to address the issue of providing statutorily required appellate review in a case there is uncontroverted evidence that a pro se appellant was denied that review. Unfortunately the Supreme Court did not fully decide this role or define the meaning of "inextricably intertwined" in Penzoil v. Texaco. But "Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgement." Northern Securities Co. v. United States 193 U.S. 197,400; 24 S.Ct. 436, 468; 48 L.Ed. 679 (S.Ct.1907- Justice Holmes dissenting). This plaintiff has not lost 11 billion dollars - only his interest in a house. Would the district court have jurisdiction in a case where the plaintiff, instead of being required to present a non-existent transcript, was denied an appeal and the state court directly stated the denial was due to the appeal having been filed on Friday the 13th or because the appellant was black? The question before this court is whether congress in raising the required level of federal appellate review of state court

decisions to the supreme also intended to raise review of all state judicial procedures to that level (which is unattainable to most plaintiffs). The plaintiff thinks not.

CONCLUSION

The petition for a writ of certiorari should be granted or summary judgement for reversal of the lower federal courts decisions and remand to the district court for further proceedings.

Respectfully submitted,

Howard Ross
Plaintiff pro se Date: June 5, 2001

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-10469 D.C. Docket No. 99-03347-CV_H_NE

HOWARD S. ROSS, Plaintiff-Appellant,
Versus
HUGH MADDOX, et.al., Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Alabama (December 21, 2000) Before COX, BIRCH, and WILSON, Circuit Judges.

PER CURIAM: Howard S. Ross, Plaintiff-Appellant, appeals the district court's order sua sponte dismissing his civil action, pursuant to 28 U.S.C. $ 1915(e)(2)(B)(I) and (ii), the in forma pauperis statute. On appeal, Ross argues that the district court erred by dismissing his complaint under 28 U.S.C. $ 1915(e)(2), because he paid the filing fee, and therefore, was not proceeding in forma pauperis. We review dismissals under 28 U.S.C. $ 1915(e)(2)(B)(ii) de novo. See Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997). Having considered the parties' briefs and all relevant portions of the record, we find that, although the district court erred by dismissing Ross's claim under 28 U.S.C. $ 1915(e)(2), we AFFIRM on other grounds.

I. BACKGROUND

Ross filed this civil action against five Alabama Supreme Court justices: Hugh Maddox, Perry Hooper, Ralph Cook, Champ Lyons, Jr., and Douglas Johnstone, in their individual and official capacities. Ross claimed that the justices violated his Fourteenth Amendment due process rights by denying his petition for certiorari. Construing his complaint liberally, Ross also claimed that his rights under the Fifth Amendment's Takings Clause were violated when the state circuit court judge entered an order divesting Ross of any claim for title in the property in dispute in the state court proceedings. Ross, however, did not name the state circuit judge as a defendant, so we will not address that claim.

Ross' state action began in the circuit court of Alabama over a property dispute. The state circuit judge granted the defendants' motion for summary judgement and entered an order divesting Ross of any claim for title in the disputed property. Ross appealed that decision, and the Alabama Court of Civil Appeals affirmed. See id. Ross then filed a motion for rehearing and was denied. Finally, Ross filed a petition for a writ of certiorari with the Alabama Supreme Court, which they denied.

Ross subsequently filed the instant action with the district court. Construing Ross' complaint liberally, he sought to have the district court order the Alabama Supreme Court justices to grant his petition for certiorari and to then have the Alabama justices review the record of the state circuit court and issue an opinion. Alternatively, Ross asked that the district court declare Ala, Code $ 6-5-255 (1975), the statute at issue in his state property case, unconstitutional, and reinstate his original action in state court.

The district court found that Ross' action was frivolous or malicious, or both, and that Ross had failed to state a claim in his complaint. The district court dismissed Ross' action, with prejudice, pursuant to 28 U.S.C. $ 1915(e)(2). The district court did not address Ross' potential Fifth Amendment claim, and Ross does not present Fifth Amendment arguments on his appeal.

II. DISCUSSION

Whether reviewing de novo or for abuse of discretion, the district court erred by dismissing Ross's case under 28 U.S.C. $1915(e)(2)(I) or (ii) because Ross had paid the full filing fee on the date the action was filed, and therefore, Ross was not proceeding in forma pauperis. Although a district court may dismiss sua sponte for frivolity, maliciousness, or for failure to state a claim under 28 U.S.C. $ 1915A, dismissal in this case under $ 1915A would have been improper because Ross is not a prisoner. Likewise, the district court could not have dismissed the case sua sponte pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. See Jefferson Fourteenth Assoc. v. Wometco de Puerto Rico, Inc. 695 F.2d 524, 526-27 (11th Cir. 1983) (providing that generally, a court may not sua sponte dismiss a complaint

under FED. R. CIV. 12(b)(6)).

We may affirm a decision on any adequate ground, even if other than that on which the district court actually relied. See Parks v. City of Warner Robbins, 43 F.3d 609, 613 (11th Cir. 1995). Here, the district court could have dismissed Ross' case under FED. R. CIV. P. 12(h)(3) for lack of subject matter jurisdiction, and we dismiss on that ground. See FED. R. CIV. P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."); Wahl v. Moliver 773 F.2d 1169, 1173 (11th Cir. 1985) ("This Court is under a duty to review its jurisdiction of an appeal at any point in the appellate process").

The district court could have sua sponte dismissed Ross' claim for lack of subject matter jurisdiction under the Rooker-Feldman doctrine. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486, 103 S.Ct. 1303, 1317, 75 L.Ed.2d 206 (1983) ("[United States District Courts] do not have jurisdiction, however, over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review of these decisions may be had only in [the United States Supreme Court].); Rooker v. Fidelity Trust Co., 263. U.S. 413, 416, 44 S.Ct. 149, 150, 68 L.Ed. 362 (1923). Under the Rooker-Feldman doctrine, a district court lacks jurisdiction to review a state court decision, even when a plaintiff alleges that the action of the state court was unconstitutional. See Feldman, 460 U.S. at 486, 103 S.Ct. at 1317; Rooker, 263 U.S. at 416, 44 S.Ct. at 150. Such reviews rest solely in the United States Supreme Court. See Narey v. Dean, 32 F.3d 1521, 1524 (11th Cir. 1994). The only exceptions are when a federal statute clearly authorizes federal appellate review or when a plaintiff does not have a reasonable opportunityto raise his federal claims in the state court proceedings. See Dale v. Moore, 121 F.3d 624, 627 (11th Cir. 1997). Further, "[t]he doctrine applies not only to claims actually raised in state court, but also to claims that were not raised in state court but are 'inextricably intertwined' with a state court's judgement." Powell v. Powell, 80 F.3d 464, 466-467 (11th Cir. 1996). This rule applies regardless of the form of the challenge, if granting relief would effectively nullify the state court's decision. See

Powell, 80 F.3d at 467.

Although Ross does not cite the Rooker-Feldman doctrine, he argues that his case does not fall within the doctrine by asserting that, "the federal court is not asked to review the decision of the state circuit court norf its application of state law." Appellant's Brief at 2. Ross is essentially asking us to determine if the state court s afforded him due process. Because this could not be done without review of the state court decisions, his claim is inextricably intertwined with the prior state court judgments. Therefore, the Rooker-Feldman doctrine applies and bars his action for lack of subject matter jurisdiction.

Moreover, neither exception to the Rooker-Feldman doctrine applies. First, no federal statute clearly authorizes federal appellate review. Second, Ross had an opportunity to raise his federal claim in the state proceeding, as evidenced by his appeal to the state appellate court, his petition for rehearing to the state appellate court, and his petition for certiorari to the state supreme court. Therefore, Ross had a reasonable opportunity to raise his federal claim in state court, and in fact did so. Accordingly, because subject matter jurisdiction is lacking, we AFFIRM.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

HOWARD S. ROSS, Plaintiff,
Vs CV99-H-3347-NE
HUGH MADDOX, et.al., Defendants.

ORDER OF DISMISSAL

In accordance with the memorandum of decision this day entered, it is ORDERED, ADJUDGED, AND DECREED that this case be and the same hereby is DISMISSED with prejudice. Costs are taxed against plaintiff.

DONE this 27th day of December, 1999.

S/ JAMES H. HANCOCK

APPENDIX B

SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

HOWARD S. ROSS, Plaintiff,
Vs CV99-H-3347-NE
HUGH MADDOX, et.al., Defendants.

MEMORANDUM OF DECISION

On December 20,1999 plaintiff commenced this action in this court against defendants in their individual and official capacities, for their failure to grant plaintiff's petition for a writ of certiorari in connection with the affirmance of his appeal to the Alabama Court of Civil Appeals in case numbered 2980199. Persuant to 28 U.S.C. $ 1915(e)(2) the court concludes that the action is frivolous or malicious, or both, and separately concludes that it fails to state a claim upon which relief may be granted. A separate order of dismissal will be entered.
DONE this 27th day of December, 1999.

S/ JAMES H. HANCOCK
SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-10469 D.C.

HOWARD S. ROSS, Plaintiff-Appellant,
Versus
HUGH MADDOX, et.al., Defendants-Appellees.

On Appeal from the United States District Court for the Northern District of Alabama
Before: COX, BIRCH, and WILSON, Circuit Judges.

APPENDIX C

PER CURIAM: The petition(s) for rehearing filed by Appellant, Howard S. Ross, is DENIED.

ENTERED FOR THE COURT: s/illegible
UNITED STATES CIRCUIT JUDGE

ALABAMA COURT OF CIVIL APPEALS

Howard S. Ross 2980199
v.
Loretta Ferrell, et al. Appeal from Madison Circuit Court

THOMPSON, Judge AFFIRMED, NO OPINION

See Rule 53(a)(1) and (a)(2)(E), Ala.R.App.P.; Boykin v. Drake, 699 So.2d 233 (Ala.Civ.App.1997); and Legal Systems, Inc. v. Hoover, 619 So.2d 930 (Ala.Civ.App.1993).

The Supreme Court of Alabama transferred the appeal to this court, pursuant to $ 12-2-7, Ala. Code 1975.

Robertson, P.J., and Yates and Monroe, JJ., concur.

Crawley, J., dissents.

CRAWLEY, Judge, dissenting.

I dissent. Jones Ferrell did not redeem the property merely by making a tender of the redemption price plus 10% interest. Ross's refusal to accept Ferrell's tender merely excused the requirement of tender contained in $ 6-5-253, Ala. Code 1975, a condition precedent to the statutory right of redemption. See Hudson v. Morton, 231 Ala. 392, 165 So.227 (1936). Ferrell was still required to file a complaint to redeem the property and to do so within one year of the sheriff's sale. See $ 6-5-248, Ala. Code 1975. He did not do so. Accordingly, Ross still has an interest in the property.

APPENDIX D